

TENNESSEE GENERAL ASSEMBLY
FISCAL REVIEW COMMITTEE



FISCAL NOTE

SB 490 – HB 560

January 31, 2023

SUMMARY OF BILL: Enacts the *Private Property Protection Act* to provide a method for a property owner to seek just compensation for a diminution of value of the property caused by the enactment or enforcement of land use regulations on the property by a local governmental entity (LGE). Provides that compensation for diminution does not apply to certain land use regulation.

Authorizes a property owner to demand just compensation through a written notice sent by certified mail to the chief executive officer of the LGE. Requires an LGE, within 180 days of receiving a written demand, to: (1) modify, remove, or choose not to apply the land use regulation; (2) offer other non-monetary remedies; (3) provide just compensation to the owner; or (4) deny that compensation is due.

Provides that, if an LGE denies that compensation is due, or denies the amount claimed to be due, and does not modify, remove, or choose not to apply the land use regulation or reach another agreement with the property owner within 180 days after a written demand for just compensation is received, a property owner has a cause of action against the LGE for compensation or other remedy in the county circuit court in which the real property is located. Requires the court to award the prevailing party necessary and reasonable attorney fees, court costs, and expenses incurred by the party during the course of the proceedings. Further provides that the remedy created by the legislation is in addition to another remedy under the Tennessee Constitution or United States Constitution, and is not intended to modify or replace other remedies.

FISCAL IMPACT:

Increase Local Expenditures – Exceeds \$10,000/FY23-24 and Subsequent Years*

Other Fiscal Impact – Due to multiple unknown factors, the extent of any additional impacts on local government revenue and expenditures cannot be reasonably determined.

Assumptions:

- Per the language of this legislation,
 - If an LGE enacts or enforces a new land use regulation that restricts or prohibits the existing uses of a parcel of private real property or an interest therein, and if as a result, the fair market value of the affected property or interest decreases by

at least ten percent, then the owner of the property must be paid just compensation.

- Compensation is not payable if the decrease in the fair market value of the affected property or interest therein is less than \$10,000.
- “Just compensation” means an amount equal to the reduction in the fair market value of the affected property interest resulting from enactment or enforcement of the land use regulation as of the date the land use regulation goes into effect.
- The proposed legislation provides that compensation for diminution does not apply to certain land use regulation, including regulation:
 - That restricts or prohibits activities commonly and historically recognized as public nuisances under common law;
 - That restricts or prohibits activities for the protection of public health and safety;
 - To the extent the land use regulation is required to comply with federal law;
 - That restricts or prohibits the use of a property for the purpose of selling pornography or performing nude dancing; or
 - That was enacted prior to the date of acquisition of the property by the owner or a family member of the owner who owned the subject property prior to acquisition or inheritance by the owner, whichever occurred first.
- Within 180 days of receiving a written demand for just compensation, an LGE shall:
 - Modify, remove, or choose not to apply the land use regulation to allow the owner to use the property for a use permitted at the time the owner acquired the property;
 - Offer other non-monetary remedies, including, but not limited to, density transfers;
 - Provide just compensation to the owner; or
 - Deny that compensation is due.
- Due to multiple unknown factors such as the number of instances of an LGE modifying, removing, or choosing not to apply a land use regulation that will occur and the purpose of such land use regulations, the extent of any fiscal impact to local government expenditures or revenue as a result of such action cannot be reasonably determined.
- It is unknown how many property owners will request and receive just compensation from an LGE each year, but it can be reasonably assumed that at least one property owner will be awarded just compensation and the increase in local expenditures will exceed \$10,000 in FY23-24 and subsequent years.
- In the event that a property owner brings a successful cause of action against an LGE for compensation, the LGE will be responsible for necessary and reasonable attorney fees, court costs, and expenses incurred by the party during the course of the proceedings. The cost of any future litigation and judgments, whether state or federal, is unknown and, therefore, any increase to local government expenditures cannot be reasonably determined.
- Any fiscal impact to the courts can be absorbed within existing resources and is estimated to be not significant.

*Article II, Section 24 of the Tennessee Constitution provides that: *no law of general application shall impose increased expenditure requirements on cities or counties unless the General Assembly shall provide that the state share in the cost.*

CERTIFICATION:

The information contained herein is true and correct to the best of my knowledge.

A handwritten signature in black ink that reads "Krista Lee Carsner". The signature is written in a cursive, flowing style.

Krista Lee Carsner, Executive Director

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